



IN THE  
Supreme Court of the United States

Term, .....

No. .... 78-1292

ROBERT P. BENDEL,  
*Petitioner,*

*v.*

UNITED STATES OF AMERICA,  
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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UNITED STATES OF AMERICA,

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
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FOR THE THIRD CIRCUIT**

Petitioner respectfully prays that a Writ of Certiorari issue to review the final judgment order of the United States Court of Appeals for the Third Circuit, No. 78-2047, entered herein on January 19, 1979, affirming the judgment of the United States District Court for the Western District of Pennsylvania (Appendix, p. 1a). The unreported Opinion of the District Court is appended at p. 3a.

### Jurisdiction

The final judgment order of the United States Court of Appeals for the Third Circuit was dated January 19, 1979 (Appendix, p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### Questions Presented

I. Did the trial court err in refusing to charge the jury with respect to the Petitioner's invocation of his Fifth Amendment rights?

II. Did the trial court err in preventing the introduction of testimony and evidence and in limiting the Petitioner's argument on the issue of a "good faith belief"?

### Constitutional Provision Involved

The Constitutional provision involved is the Fifth Amendment to the Constitution of the United States.

Amendment V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Statement of the Case

The Petitioner, ROBERT P. BENDEL, is a licensed chiropractor, (Trial Transcript 176) (hereinafter "T.T."), who was convicted on three counts of willful failure to file income tax returns for the years 1971, 1972, and 1973, in violation of Title 26 United States Code, Section 7203.

The Petitioner testified at trial in the District Court for the Western District of Pennsylvania that he filed what he believed to be a proper return for each of the years in question. In each document filed he showed his gross income in silver and the tax due on that amount, also in silver. The Petitioner did this in the belief that he was conforming to the requirements of the law:

... Q. [By Petitioner's Counsel] What did you report on your Federal income tax return for the year 1971 as you understood was required by law?

A. [By Petitioner] The number of dollars that I received as income.

Q. As you have defined it?

A. Sir?

Q. As you believe the law?

A. As I believe the law to be but as the Government had defined it.

Q. How about 1972? What was your understanding with respect to what the law required of you for purposes of filing your income and—

A. My understanding at that time was the same as 1971 that I was required to file an income tax return placing on it the number of gross dollars that I had as income.

Q. You were beginning to—Was that also true for the year 1973?

A. Yes, sir, it is. . . .

(T.T., pp. 186-187).

The Petitioner showed no deductions on these purported returns, stating that he had paid none in silver (T.T., p. 218). He paid the tax due on the amount he reported for each of the three years (T.T., pp. 180, 217). There was no dispute that these amounts were received and applied by the Internal Revenue Service (*id.*). In these "returns" Petitioner maintained that the only income subject to taxation was that obtained in the form of "dollars" as he understood the legal definition of a dollar (T.T., pp. 186-187).

He appended documents to his purported returns supporting his belief that "dollars" were defined as silver coin containing 375.64 grains of silver (T.T., p. 186).

The Petitioner testified that his patients were encouraged to pay in silver, for which they would be given a discount (T.T., pp. 186, 217). When the Internal Revenue Service objected to the adequacy of what the Petitioner filed on his returns, the Petitioner wrote the Internal Revenue Service on five or six occasions inquiring as to why his returns were thought to be inadequate (T.T., p. 188). Petitioner received no answer to any of his letters (*id.*). Petitioner stood firm in his belief that his returns were proper and according to law (T.T., p. 189).

The Trial Court undertook a vigorous examination of the Petitioner on this issue of his belief that he had conformed to the law. For example:

. . . The Court: You did everything that they have said in that letter of instruction?

Petitioner: I complied with the section I believe that I am—

The Court: I asked you a question. You got a letter. They told you what the requirements of the law were, told you what has just been read by Mr. Greenfield. Did you at anytime after you received that letter comply with those instructions?

A. I believe, Your Honor, that I already had complied with those instructions.

Petitioner's Counsel:

Q. Will you tell us how you believed you had complied with them?

A. Well, when it said \$600.00 or more, I had filled out my return with the exact number of dollars I had received as income which I believe was \$4,300.00.

The Court: Did it say anything about dollars?

Petitioner: Yes, sir, it does. It says every individual having for the taxable year having a gross income of \$600.00 or more.

The Court: Does it say in any particular form?

Petitioner: Your Honor, I take a dollar to be—

The Court: We understand your contention. . . .

(T.T., pp. 223-224).

The Court continued with its questioning as follows:

. . . The Court: Will you tell the jury why you crossed it [the Jurat Clause] out?

Petitioner: I thought I had just explained why. I felt I was protecting my Fifth Amendments rights not to be incriminating myself. I knew as I stated previously that the Internal Revenue Service would not look favorably upon the thing that I am doing here because it was a vast difference in orthodox type of filing a return. . . .

(T.T., pp. 225-226).

In response to additional questioning by the Court, Petitioner testified that he felt that,

. . . giving any further information could uncover information or supply information that could tend to incriminate me under State or Federal laws and I stated in there that I was willing to cooperate in any way or manner or form if in some way the Government could grant me criminal immunity from any criminal prosecution. That was the first letter I had sent on May 15th.



The second letter that I sent also to Mr. Patterson I stated basically that I was returning the return that he had returned back to me and along with it that I was sending a letter that I had received from W. T. Howell who was at that time the Deputy Treasurer of the United States and that it was my position that I had filed a return. . .

(T.T., p. 228).

Petitioner's purported returns for each of the years in question contained attachments supporting his belief that the document filed in fact conformed to the requirements of the law (T.T., p. 231). The Petitioner then relied on his Fifth Amendment rights in refusing to provide any additional information on his "returns" (*id.*). The Petitioner also testified that his intention was to strictly abide by the law as he then understood it (T.T., p. 235).

The Trial Judge refused the Petitioner's requested charge on the Fifth Amendment (Appendix, p. 6a) and the jury convicted Petitioner on all three counts. Petitioner's Motion for Judgment of Acquittal, or in the Alternative, for a New Trial was denied in an unreported Opinion (Appendix, p. 3a). Petitioner was sentenced to a two year term of incarceration and fined \$9,000.00, plus costs. Timely appeal was taken to the United States Court of Appeals for the Third Circuit which affirmed the judgment of conviction in a Judgment Order dated January 19, 1979 (Appendix, p. 1a).

### Reasons Relied On for the Allowance of the Writ

#### I.

The documents filed by Petitioner reported his income in silver, computed the tax as payable in silver, and indicated the Petitioner's refusal to answer any other questions con-

tained on the return by asserting his privilege against self-incrimination under the Fifth Amendment. The Court's reaction to the Petitioner's attempt to assert this issue was to sharply cut short any such discussion (T.T., p. 145ff).

Petitioner submitted a request for charge as follows:

In connection with the charges made, Dr. Bengel has testified as to his reasons for asserting the Fifth Amendment in answer to some of the questions on the tax returns.

I charge you as a matter of law, that the statutory requirement to file an income tax return does not violate a taxpayer's right against self-incrimination under the Fifth Amendment.

However, if you find that Defendant, Robert P. Bengel, in good faith, believed that the requirement to file a tax return, or to file it in a certain manner, *did* violate his right against self-incrimination, then you may consider his beliefs in connection with these charges, and, if as a result of that fair and impartial consideration you find that Dr. Bengel did not act *knowingly and intentionally and wilfully* in refusing to answer because of that good faith belief that what he was doing was legal, then you must find him not guilty. *Cooley v. U.S.*, 501 F.2d 1249 (9th Cir. 1974).

(Appendix, p. 6a). The Court refused this specific point (T.T., p. 264) and also stated that it would not charge on the Fifth Amendment issue (T.T., p. 257).

Although the invocation of the Fifth Amendment will not provide a defense to the act of failing to file a return at all, *U.S. v. Sullivan*, 274 U.S. 259, 47 S.Ct. 607 (1927), this Court has held that a taxpayer can legitimately invoke the privilege to selective questions on the return (*id.*).

*Garner v. U.S.*, 424 U.S. 657, 96 S.Ct. 1178 (1976) carries the principle further. This Court there held that had the defendant not invoked the privilege with respect to selective questions on his return he would have left himself open to prosecution for failure to file, the very charge on which Bengel was indicted. The Court indicated:

that the information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a witness. . .

424 U.S. at 656, 96 S.Ct. at 1183.

Justice Powell, writing for the majority, then concluded:

a [26 U.S.C.] § 7203 conviction cannot be based on a valid exercise of the privilege. This is implicit in the dictum of *United States v. Sullivan* [citation omitted] that the privilege may be claimed on a return. . . . The Fifth Amendment itself guarantees the taxpayer's insulation against liability imposed on the basis of a valid and timely claim of privilege, a protection broadened by § 7203's statutory standard of 'willfulness'.

424 U.S. at 662-63, 96 S.Ct. at 1186, 1187.

A defendant in a criminal case is entitled to a jury instruction on all defense theories for which there is a basis in evidence and in law. "A defendant cannot be short changed nor his jury trial truncated by failure to charge." *Strauss v. U.S.*, 376 F.2d 416, 419 (5th Cir. 1967).

It matters not one jot that the trial judge does not believe that the defense is credible or that it is fragile, or, as this trial judge concluded, "ridiculous", (T.T., pp. 142, 197).

The refusal of the trial court to charge on the Fifth Amendment question deprived the Petitioner of his right to a primary argument in support of the alleged legitimacy of his action.

## II.

The Petitioner's principal contention throughout the trial was that he, in good faith, believed that he was discharging the obligations the law imposed upon him. This contention was designed to meet, and negate, the Government's evidence to establish the essential element of wilfulness (*i.e.*, T.T., pp. 185-186, 208-209, 216).

As the Court below framed this issue for the jury in its charge, in order to convict the Petitioner, it was necessary for the jury to find:

He had the deliberate intention not to file a return which he knew ought to have been filed or put in the information which he knew ought to be required.

(T.T., p. 299); and again:

The only purpose that the Government has to prove in this case is to show that it was willful; that this Defendant had a deliberate intent not to file the type of return that the Government requires and that the Defendant knew what the Government required at the time that this occurred.

(T.T., p. 301).

Finally, the Court stated:

It's the kind of information that you have to give and if he didn't do that and if it was a willful thing, then he is guilty of the offense. If, on the other hand, this was not an intentional failure to file the kind of return that the law requires, then that would be an adequate defense.

(T.T., p. 304).

Insofar as the charge is concerned, it is a valid statement of the law concerning the element of wilfulness in a § 7203 prosecution, as reflected by the decision of this Court in *United States v. Pomponio*, 429 U.S. 10 (1976).

In *Pomponio* the trial court, in a § 7206(1) prosecution defined willfulness as an act done

voluntarily and intentionally and with the specific intent to do something which the law forbids, that is to say with [the] bad purpose either to disobey or to disregard the law.

The jury was also told that

[good] motive alone is never a defense where the act done or omitted is a crime[.]

and that therefore motive was irrelevant except as it bore on intent 429 U.S. at 11.

The Court of Appeals for the Fourth Circuit reversed on the basis of this last instruction, holding that the statute "requires a finding of bad purpose or evil motive," (*id.*).

This Court reversed the Circuit, holding that the trial court's instructions were a correct statement of the law as expressed in prior Supreme Court decisions. The Court then went on to reiterate its prior pronouncements on willfulness as requiring proof of no motive other than "an intentional violation of a known legal duty" (*id.* at 13).

*Pomponio* therefore did not change prior law, rather it reaffirmed it. That law was expressed in *United States v. Bishop*, 412 U.S. 346 (1973):

The Court, in fact, has recognized that the word "willfully" in these statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as "bad faith or evil intent". . . or "evil motive and want of justification in view of all the financial circumstances of the taxpayer," . . . or knowledge that the taxpayer "should have reported more income than he did."

412 U.S. at 360 (citations omitted).

It is thus true that a good motive, or excuse, or justification is irrelevant when it is established that an individual has violated a *known legal duty*; it is also true that one is entitled to demonstrate that the act he did or omitted was done or omitted as a consequence of a good faith belief that he was complying with the law. See, e.g., *United States v. Swanson*, 509 F.2d 1205, 1210 (8th Cir. 1975). Stated another way, no matter how convinced one is that the tax laws are unconstitutional, and no matter how profoundly fixed that belief is in the bedrock of morality or a personal view of the law, such a belief offers no protection from a finding of willfulness when a known legal duty is violated. Being *known*, it is required, regardless of belief. On the other hand, if the individual is convinced, as a matter of good faith—a question for the finder of fact based on all the evidence—that his act *is* in compliance with the law, that he *is* complying with the requirements of the law, he is entitled to show the jury this. A jury of course is free to accept it or reject it.

In the instant case however, the trial Court stretched *Pomponio* beyond its intended limits (T.T., p. 146). Petitioner was prohibited from testifying about his good faith belief that his actions were proper and lawful (T.T., pp. 137, 169, 146). Nor was he allowed to present documentary evidence to support this contention (T.T., p. 169). Finally, a counsel was prohibited from arguing this precise issue to the jury (T.T., p. 137).

These prohibitions deprived the Petitioner of a fair trial by preventing him from presenting the "good faith" issue to the jury. This was especially egregious in light of the trial court's instructions on willfulness, set out *supra*, since by preventing Dr. Bengel from making a case on these points the court, in effect, told the jury that he had none.



The instant case is distinguishable from those cases which do not concern good faith attempts to comply with the legal duty in question, but rather involved attempts to explain why a defendant chose not to *comply* with a known legal duty. *See, e.g., United States v. Dillon*, 566 F.2d 702 (10th Cir. 1977).

If the Petitioner had been permitted to demonstrate that he, in good faith, believed that the documents he filed for the years in question were lawful and proper tax returns, and that by filing them he was attempting to, and thought he was, discharging a known and admitted legal duty he might have demonstrated a reasonable doubt on the issue of willfulness. By depriving him of this opportunity, especially where, as here, the Government introduced pre-indictment tax returns to demonstrate that the Petitioner was aware of his "duty" and therefore acted willfully when he ceased to file "proper returns" in the indictment years, the Court effectively directed a verdict of guilty against the Petitioner.

### Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

STANLEY W. GREENFIELD, P.C.,

Stanley W. Greenfield, Esquire,  
*Attorney for Petitioner.*

## APPENDIX

### Judgment Order

#### UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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NO. 78-2047

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UNITED STATES OF AMERICA,

v.

ROBERT P. BENGEL,

*Appellant.*

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
Crim. No. 77-00305

Submitted Under Third Circuit Rule 12(6)  
January 15, 1979

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Before: ADAMS and WEIS, *Circuit Judges*, and  
WEINER, *District Judge*\*

After consideration of all contentions raised by appellant, namely, that (1) the court erred in directing the jury that the documents filed by the appellant for the years 1971, 1972 and 1973, were not tax returns as a matter of law; (2) the court erred in refusing to charge the jury with respect to appellant's invocation of his fifth amendment rights; and (3) the court

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\* Hon. Charles R. Weiner, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

*Appendix—Judgment Order.*

erred in preventing the introduction of testimony and evidence, and limiting appellant's argument on the issue of a "good faith belief, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

(ILLEGIBLE) M. ADAMS,  
Circuit Judge.

ATTEST:

THOMAS F. QUINN, CLERK.

Dated: January 19, 1979

*Appendix—Memorandum Opinion and Order.***Memorandum Opinion and Order**

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

ROBERT P. BENDEL,

*Defendant.*

Criminal No. 77-305

Defendant Robert Bengel was charged by indictment with the offenses of willful failure to file income tax returns for the years 1971, 1972 and 1973. Defendant purports to believe that only gold or silver coin or certificates redeemable for the same are lawful money; that Federal Reserve Notes are not legal tender and that the receipt of Federal Reserve Notes and checks in the course of one's business or profession need not be reported as income to the Internal Revenue Service. After trial by jury, defendant Bengel was found guilty of willful failure to file income tax returns for all three years charged in the indictment. Defendant has now moved for judgment of acquittal, or in the alternative a new trial.

Bengel, a chiropractor, was shown at trial to have averaged approximately \$55,000 in gross income for the years in question. Nonetheless, Bengel only reported nominal amounts of such income to the Internal Revenue Service in

*Appendix—Memorandum Opinion and Order.*

accordance with his belief that Federal Reserve Notes and checks were not money. The central issue at trial was whether or not Bengel's belief would provide a defense to the crimes charged. In view of the exhaustive discussion of this point at trial, only a few brief comments are now necessary.

It is important to understand that the government introduced evidence showing that Bengel filed proper income tax returns for pre-indictment years, thereby enabling the jury to reasonably conclude that Bengel was aware of the requirement to report all gross income realized in any form.<sup>1</sup> Therefore, while this Court allowed defendant to introduce evidence tending to show that Bengel did not know he had to file a tax return in the manner annually required for the purpose of rebutting the existence of criminal intent, no evidence was permitted which would merely establish that Bengel, although aware of the obligation to report *all* gross income, disagreed with the validity of such a requirement. As a matter of law the government need only prove that Bengel had a deliberate intent not to file the type of returns that the government requires and that the defendant knew what the government required at the time he filed them. *United States v. Pomponio*, 429 U.S. 10 (1976); *United States v. Adams*, Unpublished Opinion, 76-1736 (3d Cir. 1977); *United States v. Dillon*, 566 F.2d 702 (10th Cir. 1977). There is ample evidence upon which the jury could have found that Bengel had the requisite criminal intent in relation to the offenses charged.

We have considered defendant's other contentions and find them to be without merit. An appropriate Order will issue.

HUBERT I. TEITELBAUM,  
United States District Judge.

<sup>1</sup> See Section 1.61-1(a) of the Income Tax Regulations.

*Appendix—Memorandum Opinion and Order.***ORDER**

AND NOW, this 12th day of July, 1978, in accordance with the foregoing Opinion, IT IS ORDERED that defendant's motion for judgment of acquittal, or in the alternative for new trial is hereby denied. Defendant is FURTHER ORDERED to appear on Friday, July 28 at 9:15 A.M., Courtroom No. 12, 1036 U.S. Post Office and Courthouse, for sentencing.

HUBERT I. TEITELBAUM,  
United States District Judge.

copies to:

United States Attorney

Stanley W. Greenfield, Esquire  
728 Fifth Avenue  
Pittsburgh, PA 15219

United States Probation Office

United States Marshal

JUL 13 1978

*Appendix—Defendant's Request for Instructions.***Defendant's Request for Instructions**

IN THE UNITED STATES DISTRICT COURT  
For the Western District of Pennsylvania

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UNITED STATES OF AMERICA,

v.

ROBERT P. BENDEL.

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Criminal No. 77-305

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1. Defendant, Robert T. Bengel's conduct cannot be found to be willful if he acted through negligence, inadvertence or mistake, or if he acted in a way consistent with his good faith misunderstanding, of what the law required of him.

2. Thus, a good faith belief in the propriety of one's actions, no matter how inappropriate or misplaced, so long as he believes it conforms to what the law requires, is a complete defense to the crimes charged. This is so because a good faith belief completely erases any question of bad intent and thus an essential element of the offense is lacking. Should you find therefore that Dr. Bengel had such a good faith belief in the correctness of his actions as he believed they conformed to the law, then you must find the Defendant not guilty.

3. If you find from all the evidence, i.e., after impartially and even-handedly considering the evidence put forward by the prosecution and the Defendant alike, that Dr. Bengel was

*Appendix—Defendant's Request for Instructions.*

honestly convinced or honestly mistaken in his belief that he was conforming to the law, you must find him not guilty.

This is so because if a person believes in good faith that he has done all that the law requires, he cannot be guilty of the necessary specific criminal intent to wilfully fail to file a tax return.

Conversely, of course, if Dr. Bengel acted without a reasonable ground for believing that his conduct was lawful, the jury could then decide whether he acted in good faith or whether he intended, wilfully, to file a tax return.

4. The Defendant, Robert P. Bengel, however, has introduced evidence showing that he acted:

(a) in reliance upon his understanding of what the law required of him after extensive reading and research;

(b) on the definition of a "dollar" as defined by the U.S. Department of the Treasury;

(c) upon his conviction that the Fifth Amendment allowed him not to answer certain questions; and

(d) that he did file documents each year which reported all of the income, and answered all of the questions, which he believed the law required.

Now if you believe Dr. Bengel was attempting to comply with the law in good faith, even if he was wrong and this evidence raises a reasonable doubt in your mind as to Dr. Bengel's guilt, you must find him not guilty. *Cooley v. U.S.*, 501 F.2d 1249 (9th Cir. 1974); *U.S. v. Rosenfield*, 469 F.2d 598 (3d Cir. 1972).

5. In connection with the charges made, Dr. Bengel has testified as to his reasons for asserting the Fifth Amendment



*Appendix—Defendant's Request for Instructions.*

in answer to some of the questions on the tax returns in question.

I charge you as a matter of law, that the statutory requirement to file an income tax return does not violate a taxpayer's right against self-incrimination under the Fifth Amendment.

However, if you find that Defendant, Robert P. Bengel, in good faith, believed that the requirement to file a tax return, or to file it in a certain manner, *did* violate his right against self-incrimination, then you may consider his beliefs in connection with these charges, and, if as a result of that fair and impartial consideration you find that Dr. Bengel did not act *knowingly and intentionally and wilfully* in refusing to answer because of that good faith belief that what he was doing was legal, then you must find him not guilty. *Cooley v. U.S.* 501 F.2d 1249 (9th Cir. 1974).

Respectfully submitted,

STANLEY W. GREENFIELD,  
*Attorney for Defendant.*